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7			
8	UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA		
9			
10	In Re: Imtiaz Sheikh and Zarina Sheikh	Chapter 13 Case No: 12-50884 SLJ	
11	Debtor		
12	Imtiaz Sheikh and Zarina Sheikh		
13	Debtor		
14	VS.		
15	Bank of America, N.A.		
16	Respondents		
17	·		
18	MOTION TO VALUE & AVOID LIENS		
19	Property Address: 1797 West Campbell Ave. Campbell, CA 95008		
20	Debtors, Imtiaz Sheikh and Zarina Sheikh, move the Court for an Order Valuing & Avoiding		
21			
22	Junior lien filed by Bank of America, N.A. (hereinafter "Second Lien").		
23	The lender recorded its lien against debtor's residence and the lien should be avoided as the		
24	market value of debtor's residence is less than the amount owed encumbrances senior to the		
25			
	Page 1	ELLAHIE & FAROOQUI LLP 12 South. First Street, Suite 600 Son Loca Colifornia 95113	
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lien. This lien is accordingly not entitled to secured status within the meaning of 11 U.S.C. 506(a).

In support of the Motion debtors have filed the Declaration of Imtiaz Sheikh (hereinafter "Declaration") which contains the exhibits referred to herein. Each of these exhibits is incorporated herein by reference.

Debtor submits as follows:

- The debtors commenced this case on February 3, 2012. The plan is awaiting 1. confirmation.
- Among the assets at the commencement of the case is the debtor's residence, 2. commonly known as 1797 W Campbell Ave. Campbell, CA 95008 (hereinafter "the Property") valued at \$656,700. The legal description of the property is attached as Exhibit A of the Declaration.

SENIOR LIEN HOLDER

- 3. On or about January 11, 2007, Bank United, FSB (herein "Senior Lien" **Holder**") recorded a senior deed of trust in Santa Clara County, where the Property is located (**Document 19260580**). A copy of the recording information pertaining to the Deed of Trust (DOT) is attached to the Declaration as *Exhibit B*.
- Debtors were advised that Carrington Mortgage Services is a current servicing 4. agent. A copy of the transfer of clam is attached to the Declaration as Exhibit C.
- 5. The Senior Lien Holder filed a proof of claim in the amount of \$750,405.76 that is more than the \$656,700 market value of the property. A copy of the proof of claim is attached as Exhibit D.

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6. On or about June 19, 2008, Bank of America, N.A. recorded a junior deed of trust in Santa Clara County (**Document No. 19891329**). A copy of the Deed of Trust (DOT) is attached to Declaration as Exhibit E.

7. The Junior Lien Holder filed, a proof of claim in the amount of \$254,861.57 that is attached to the Declaration as Exhibit F.

PROPERTY VALUATION

- 8. Debtors have reviewed the Zillow valuation and they are familiar with the values of homes in this locality. Debtors believe the value of the Property at the commencement of the case was and is \$656,700 as reflected in the Zillow print out. A copy of the Zillow valuation document is attached to Declaration as Exhibit G.
- 9. The current market value of the property is \$675,000 that is less than the senior lien \$750,405.76 on the property as reflected in the appraisal that is attached to the Declaration of Thomas Feldenheimer, a certified appraiser. The Declaration of Thomas Feldenheimer is attached to the Debtor's declaration as Exhibit H.

This matter is governed by Bankruptcy Local Rule 9014-1(b)(3). Objections and/or requests for a hearing, if any, as to the above-proposed motion, must be in writing and filed with the Clerk of the Bankruptcy Court, 280 S. First St., San Jose, California, and served upon Javed I. Ellahie, Attorney for the Debtor not later than 21 days after the service of this notice. Any objection or opposition must be accompanied by declarations and/or memorandum of law the objecting party wishes to present in support of the objection. If an objection is timely filed and served in the undersigned, this office will obtain a court hearing date and give at least 7 days written notice of the hearing to the

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bjecting party. Any objections not timely filed and served shall be deemed waived. The noving party may then ask that the court approve the proposed action by default without hearing.

WHEREFORE, the debtor prays that the Court Order as follows:

- 1. That the junior lien recorded on or about June 19, 2008, as **Document No.** 19891329 with the Santa Clara County Recorder, by Bank of America, N.A is void under 11 USC 1322(b)(2); is an unsecured claim within the meaning of 11 U.S.C. § 506 (a) and that said Lien be declared null and void as to the Property described herein.
- 2. The entered order shall become part of Debtors' confirmed Chapter 13 plan.
- 3. Upon entry of a discharge or completion of plan payments in Debtors' chapter 13 case, the Lien shall be voided for all purposes, and upon application by Debtor, the court will enter an appropriate form of judgment voiding the Lien.
- 4. If Debtors' chapter 13 case is dismissed or converted to one under another chapter before Debtors obtain a discharge or completes plan payments, the entered order shall cease to be effective and the Lien shall be retained to the extent recognized by applicable nonbankruptcy law, and upon application by the lien holder, the court will enter an appropriate form of order restoring the Lien.
- 5. Except as provided by separate, subsequent order of this court, the Lien may not be enforced so long as the entered order remains in effect.

Respectfully Submitted ELLAHIE & FAROOQUI LLP

Dated: August 22, 2013 /s/ Javed I. Ellahie Javed I. Ellahie, Esq. (Attorney for Debtor)

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